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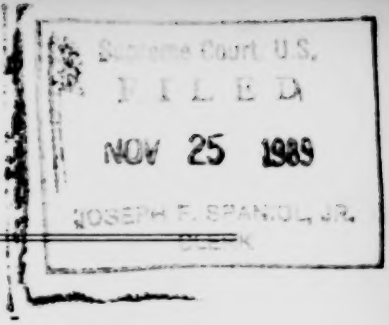

No. 89-

In The

Supreme Court of the United States

October Term, 1989

CHARLES FRANCIS LAFITTE,

Petitioner,

vs.

CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION THREE

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QUESTION PRESENTED*

1.

DOES *MICHIGAN V. LONG* AUTHORIZE THE SEARCH OF THE PASSENGER COMPARTMENT OF AN AUTOMOBILE MERELY BECAUSE WHAT COULD BE INTERPRETED AS A WEAPON IS OBSERVED IN PLAIN SIGHT DURING A LAWFUL STOP WHEN THERE IS NO EVIDENCE OF DANGER TO THE OFFICERS AND NO PROBABLE CAUSE TO BELIEVE OTHER WEAPONS ARE PRESENT?

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* All parties to the proceeding in the lower court are listed in the caption.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

CONSTITUTIONS

TABLE OF AUTHORITIES – Continued

No. 89-

In The

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vs.

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION THREE

Petitioner, Charles Francis Lafitte, respectfully petitions this Honorable Court to issue a Writ of Certiorari to review the action of the California Supreme Court in denying review and the judgment of the California Court of Appeal, Fourth Appellate District, Division Three in a decision entitled *People v. Charles Francis Lafitte*. Petitioner respectfully requests review to settle an important question of law since the holding in the instant case relied primarily on *Michigan v. Long*, 463 U.S. 1032 (1983) but expanded the scope beyond the holding in *Long*. Unlike *Long*, there are no facts in the instant case to suggest any reasonable danger to the officers, and no articulable suspicion to believe Petitioner possessed other weapons. The

decision of the Court of Appeal unconstitutionally requires a forfeiture of Fourth Amendment rights, to be free from *unreasonable* search and seizure, in order to exercise the right to carry in a vehicle anything that could be interpreted as a weapon. Please consider just one of many examples. A father returning from a little league game with his son's baseball bat[1] on the front seat and his son in the back, is now in jeopardy of a humiliating search in front of his son when stopped for a minor traffic infraction. Petitioner asserts the Court of Appeal reached the decision in the erroneous belief that *Long* required it. Petitioner additionally asserts this Court in *Long* did not intend its decision to be interpreted so broadly.

OPINIONS BELOW

The opinion of the California Court of Appeal, Fourth Appellate District, Division Three, is published at 211 Cal.App.3d 1429 (1989). (This opinion is attached in Appendix A.)

JURISDICTION

The judgment of the California Court of Appeal, Fourth Appellate District, Division Three, affirming conviction, was entered on June 30, 1989. A petition for review was filed with the California Supreme Court on August 9, 1989. The judgment of the California Supreme

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[1] Baseball bats can be interpreted as weapons. (*People v. Petters* (1938) 29 Cal.App.2d 48; a wooden club found to be a dangerous weapon.)

Court summarily denying review, with two justices of the opinion the petition should be granted, was entered on October 12, 1989. (The order denying review is attached as Appendix B.)

This Petition, filed within 60 days of the October 12, 1989 judgment denying review, is timely. The jurisdiction of this court is invoked under 28 U.S.C. sec. 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND REGULATIONS INVOLVED

This case involves the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the California Constitution. (These are set forth in pertinent part in Appendix C.)

STATEMENT OF THE CASE

On April 7, 1988, an Information was filed in the Orange County Superior Court alleging Petitioner, Charles Lafitte, violated California Penal Code Section 12021 (felon in possession of a firearm).

On May 13, and 20, 1988, at a hearing before the Honorable Leonard H. McBride, Petitioner moved, pursuant to California Penal Code Section 1538.5 to suppress evidence obtained as a result of a search of his vehicle, claiming it had been searched in violation of his rights under the Fourth Amendment to the United States Constitution. Testimony at the motion to suppress evidence revealed that on March 14, 1988, sheriff's deputy Bieker was patrolling around 10:00 p.m. when his attention was

drawn to an older model brown Cadillac with an inoperable headlight (RT:19,20).[2] The Cadillac was stopped directly in front of a Taco Bell restaurant that was open for business,[3] (RT:3,12) and deputy Bieker and his partner deputy Koppin, both in full uniform, approached, using their flashlights to illuminate Petitioner and the interior of his car (RT:19,20,22,33).[4] As deputy Bieker approached, Petitioner, who was the driver of the vehicle, immediately rolled his window down (RT:31,32). Petitioner was asked for his driver's license and he said that he did not have it with him (RT:21). During this time, deputy Koppin, who was on the passenger side, told deputy Bieker to get Petitioner out as there was a knife in the car (RT:21,33).[5] Petitioner never made any move toward the knife (RT:38).

Deputy Bieker asked Petitioner, who was very cooperative and did not appear to be under the influence of alcohol or drugs, (RT:36) to step out of the car; took his arm and walked him to the curb where he patted him down for weapons, handcuffed him, and had him sit on a

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[2] "RT" refers to the Reporter's Transcript of the proceedings in the Superior Court, by page number.

[3] This is a fairly busy intersection with a store, a donut shop, a liquor store and a service station on the corners across from the Taco Bell (RT:5).

[4] Petitioner's vehicle also was illuminated by the headlights and the spot lights from deputy Bieker's patrol unit (RT:32,33).

[5] Two additional police units were across the street, and came over to see what was going on (RT:26,33). One arrived while deputy Bieker was talking to petitioner on the sidewalk (RT:14).

curb of a planter that was around a grassy area in front of the Taco Bell restaurant (RT:7,9,15,22,23,34). Immediately after Petitioner was told to sit down, he was asked for consent to search his vehicle which he denied, whereupon deputy Bieker searched it anyway while deputy Koppin stayed to watch Petitioner (RT:23,35,42). A three-and-one-half to four-inch knife incased in a sheath, legally possessed and in plain sight, was found resting on the open glove box door with the handle extended over the edge of the door toward the driver's seat (RT:23,35,36). The subsequent search by officer Bieker located a clip for a gun containing six .22 caliber bullets under the driver's seat, and hanging from the ashtray inside a trash bag was an unloaded .22 caliber handgun (RT:24,37).

During the time between the car stop and the transportation of Petitioner to jail, four or five other police cars stopped by the scene, two of which had been directly across the street at the donut shop and these deputies observed the stop (RT:14,26,28,33).

At the conclusion of testimony the Petitioner's motion to suppress was denied. After a petition for writ of prohibition/mandate was filed and denied on June 16, 1988, Petitioner entered a plea of guilty and received the maximum sentence of three years state prison, and a timely notice of appeal was filed.

On June 30, 1989, the decision of the Orange County Superior Court was affirmed by the California Court of Appeal, Fourth Appellate District, Division Three. A petition for rehearing was filed on July 14, 1989 and denied on July 28, 1989.

A petition for review was filed with the California Supreme Court on August 9, 1989. The judgment of the California Supreme Court denying review, with two justices of the opinion the petition should be granted, was entered on October 12, 1989. Petitioner seeks relief by way of this petition.

REASONS WHY THE PETITION SHOULD BE GRANTED

In *People v. Lafitte,* the California Court of Appeal and California Supreme Court have condoned the search of a vehicle of a citizen absent any particularized suspicion of criminality or wrongdoing. Further, the search is condoned despite the fact that, unlike in *Long,* there was nothing to suggest that the officers were in any real danger. The lower court's analysis of the constitutionality of this search rests on this Court's holding in *Michigan v. Long,* expanding *Long* beyond its holding. Consequently, police will now be permitted to intrude into the daily lives of numerous people traveling the roads of California absent the previously required suspicion. In practice, this decision permits arbitrary searches of automobiles after a traffic stop solely because an article, that could be interpreted as a weapon, is viewed in plain sight. Such a practice offends the Fourth Amendment and traditional notions of due process and equal protection of the law.

By allowing car searches of drivers stopped for traffic violations, absent specific and articulable facts from which an officer may reasonably suspect that the driver is armed and dangerous or any reasonable officer safety concerns, California has chosen to afford no Fourth Amendment protection to many drivers in California, while those in other states are afforded such protection.

This petition should be granted so that this Court can protect the reasonable expectation of privacy of California drivers, rights guaranteed to persons who travel the public roadways in other states. If this Court does not remedy California's misapplication of *Michigan v. Long*, protections of the Fourth Amendment will continue to be denied to many utilizing the roadways of California. The police can arbitrarily decide what is a weapon, in order to justify a car search. As perceptively recognized by Justice Brennan in the *Long* dissent, " . . . many things can be used as weapons."[6] Finally, in this case Petitioner, Charles Lafitte, will have been deprived of his right to enjoy that same use of the public roadways, free from unwarranted and indiscriminate police interference.

REASONS WHY WRIT SHOULD BE GRANTED

1.

THE CALIFORNIA APPELLATE COURT'S INTERPRETATION OF *MICHIGAN V. LONG* GOES BEYOND THE UNITED STATES SUPREME COURT'S HOLDING IN *LONG* AND AGAINST THE GRAIN OF THE FOURTH AMENDMENT THAT SEARCHES BE REASONABLE

A. *MICHIGAN V. LONG* DOES NOT AUTHORIZE THE SEARCH OF A PASSENGER COMPARTMENT OF AN AUTOMOBILE MERELY BECAUSE A WEAPON IS OBSERVED IN PLAIN SIGHT DURING A LAWFUL STOP

The *Long* Court emphasized:

. . . our opinion clearly indicates that the area search that we approve is limited to a search for

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[6] *Michigan v. Long, supra*, 463 U.S. at p. 1061.

> weapons in *circumstances* where the officers have a *reasonable* belief that the suspect is potentially dangerous to *them*. *Long, supra*, 463 U.S., at 1052, f.n. 16, *emphasis added*.

The California Constitution, article I, section 13 and the Fourth Amendment protect citizens from arbitrary government intrusion in their privacy by imposing a standard of reasonableness upon the exercise of discretion by government officials. Dispensing with individualized suspicion upsets the balance of interests implicit in the reasonableness requirement of the Fourth Amendment.

The essential proscription of the Fourth Amendment is to impose a standard of "reasonableness" upon the exercise of discretion by law enforcement agents. *Delaware v. Prouse*, 440 U.S. 648 (1979). The permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate government interests. The reasonableness test requires the facts upon which the intrusion is based be capable of measurement against an objective standard.

The reasonable standard was upheld in *Michigan v. Long, supra*, 463 U.S. 1032, where the holding only authorizes police to search "the passenger compartment [of a car] . . . [if] they . . . [have] reason to believe that the vehicle . . . [contains] weapons potentially dangerous to . . . [those] officers." (*Id.* at 1035.)

In *Long* Deputies Lewis and Howell, while patrolling in a rural area shortly after midnight, observed a car traveling erratically and at excessive speeds. As they followed the car, it turned down a side road, where it

swerved off into a ditch. Long met the deputies at the rear of the car where he was asked for his driver's license. Long did not respond until asked a second time. When asked for a vehicle registration, Long initially did not respond and upon a second request, he began walking towards the open driver's door of his car. Deputy Howell thought Long appeared to be under the influence of something.

Before Long could enter his car, the deputies observed a *large* hunting knife on the floorboard of the driver's side of the car. Long was stopped and a patdown followed which revealed no weapons.

Deputy Howell then shined his flashlight into the car but did *not* enter it. The purpose of his actions was to look for additional weapons, presumably in plain view. Without entering, he observed something protruding from under the armrest on the front seat. He knelt in the vehicle and lifted the armrest discovering an open pouch of marihuana. Long was then arrested for possession of marihuana and his vehicle was searched.

In upholding the discovery of the marihuana found inside the passenger compartment of the car, the *Long* Court reasoned:

> The *circumstances of this case* clearly justified Deputies Howell and Lewis in their *reasonable* belief that Long posed a danger if he were permitted to reenter his vehicle. The hour was late and the area rural. Long was driving his automobile at excessive speed, and his car swerved into a ditch. The officers had to repeat their question to Long, who appeared to be 'under the influence' of some intoxicant. (*Id.* at 1050, *emphasis added.*)

Moreover, the marihuana was not seized until Deputy Howell, from outside the vehicle, looked in with his flashlight. He saw an unidentifiable object sitting on the seat next to the driver's position, and that object could have been (or contained) a weapon. What were the " 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant[ed]' the officer in believing that . . . [Long] . . . [was] dangerous . . . [?]" *Id.* at 1049 *quoting Terry v. Ohio*, 392 U.S. 1 (1968). As the Court pointed out, it was late (dark), the area rural. Long's vehicle, traveling at excessive speeds and erratically, turned down a side road before it swerved into a ditch. Long was under the influence of something. Also, Long had a *large* knife and an *unidentifiable object within his reach.*

It is not hard to envision why the *Long* Court concluded that Long was potentially dangerous to Deputies Lewis and Howell if allowed to reenter his vehicle. Long was under the influence of something[7] and people under the influence act in an irrational manner. People involved with drugs often carry dangerous weapons. All other factors considered, it was not unreasonable to fear that the large knife could have been retrieved and swung at the deputies. More important, an unidentified object was within Long's easy reach. Also, if Long had decided to harm the deputies, the side road of the rural area was the perfect setting.[8]

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[7] It would be reasonable to assume the officers suspected Long of being under the influence of illegal drugs since there was no mention that the officers smelled alcohol.

[8] See *People v. Powell*, 67 Cal.2d 32 (1967). [Officer Campbell and Officer Hettinger were abducted by Jimmy Lee

(Continued on following page)

The fact the stop in *Long* took place in a rural location was significant to the decision in that case (along with the additional factors).

In Petitioner's case, there is only one "specific and articulable fact" to support a belief (reasonable or not) that Petitioner was "presently" dangerous to deputies to deputies Bieker and Koppin:[9] Petitioner had a legal three-and-one-half to four-inch double bladed knife incased in a sheath in plain view in his vehicle. What are the "rational inferences" that can be taken from this fact? That if allowed to reenter his vehicle he would grab that knife and harm the deputies? Or, that he would retrieve a hidden gun and shoot the officers after he was cited and free to leave?[10] The deputies had guns; there were two additional police cars across the street at the donut shop.

(Continued from previous page)

Smith and Gregory Lewis Powell from a busy Los Angeles area and taken to a rural area of Bakersfield, California. During the trip, Powell was drinking hard liquor. Officer Campbell was forced to drive the car down a side road into an onion field where he was shot and killed. Officer Hettinger escaped.]

Why didn't the perpetrators just shoot the officers in Los Angeles? It is obvious. Potential killers are less likely to act when their deeds are easily observed by others.

[9] "Presently" is used here rather than "potentially" as suggested by the Court of Appeal. *People v. Lafitte, supra,* 211 Cal.App3d at p. 1433, f.n. 4.

[10] It is immaterial that Petitioner actually did have an unloaded gun in his car. The exclusionary rule would fail in its purpose if a search could be justified for what it turned up. *People v. Brown,* 45 Cal.2d 640, 644-655 (1955).

There were witnesses in the nearby Taco Bell. Furthermore, Petitioner was not under the influence; he was cooperative; the only reason for the stop being an inoperable head light. Had Mr. Lafitte been cited and released, it is absurd to believe that he might then seize a weapon and attack the officers.

The Appellate Court opinion herein concluded that it was reasonable, in light of the observation of the knife and its position in the car, to suspect Petitioner harbored additional weapons in the car, thus justifying the search. However, there is nothing in the record to provide probable cause that contraband existed.[11] Mere suspicion does not give rise to probable cause. *United States v. Vasey*, 834 F.2d 782 (1987). Moreover, the Court did *not* address the issue of whether or not the officers had a reasonable belief that Petitioner was "presently" a danger to *them* as required by *Long*.[12]

Under the circumstances of this case, the Petitioner was much less dangerous to the two deputies than a person driving around in a pickup truck with a rifle in the back window; a scene observed daily in several states and in many towns and rural areas in California. Yet, vehicle searches are neither done nor are they legal when these people are stopped, unless *additional facts* warrant a search.

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[11] See *United States v. Ross*, 456 U.S. 798 (1982).

[12] There is no evidence that the officers subjectively believed they were in danger, and no evidence that such a belief would have been objectively reasonable.

It is interesting that the California Supreme Court recently observed:

> By proscribing searches and seizures without adequate cause or judicial authorization, the Fourth Amendment guards, among other things, against the police tactic of 'investigative detention.' *People v. Boyer*, 48 Cal.3d 247, 267 (1989) *citing*, *Hayes v. Florida*, 470 U.S. 811, 815-816 (1985).

If the Court of Appeal opinion is allowed to stand, a mere plain view observation of a potential weapon in a car after a car stop would justify a full search of the passenger compartment, with no other "specific and articulable" facts to support a reasonable conclusion that the passenger is a "present" danger to those officers. If the police simply want to search a car because they have a "hunch" that it "may" contain "something" illegal, *Lafitte* will be used as a "tactic" to justify the search. This is contrary to the holdings of the United States Supreme Court, and ironically the opinions of the California Supreme Court as well.

CONCLUSION

Accordingly for all the aforementioned reasons, Petitioner respectfully urges this Court to grant his petition and reverse the decision of the California Court of Appeal.

Respectfully submitted,

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By
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APPENDIX A

[No. G007024. Fourth Dist., Div. Three. June 30, 1989.]

THE PEOPLE, Plaintiff and Respondent, v.
CHARLES FRANCIS LAFITTE, Defendant and Appellant.

SUMMARY

Defendant pleaded guilty to being an ex-felon in possession of a gun after the trial court denied his motion to suppress the gun seized by police officers from defendant's car after they had stopped it for having an inoperable headlight and conducted a search upon observing a knife inside the car. (Superior Court of Orange County, No. C-67805, Leonard H. McBride, Judge.)

The Court of Appeal affirmed, holding that law enforcement officers may justify a protective search of a traffic detainee's car when the sole basis for believing the suspect dangerous is the plain view of a legal weapon (the knife) within that vehicle. The court held the validity of the search did not depend on whether the weapon whose observation precipitated the search was possessed in accordance with state law. Considering the nature of the weapon, a four-inch double-edge dagger, and the position in which it was found, the court held the officers reasonably suspected defendant harbored additional weapons in the car. (Opinion by Sonenshine, J., with Crosby, Acting P. J., and Wallin, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1a, 1b) Search and Seizures § 79 – Without Warrant – Search of Vehicle – Incident to Temporary Detention – Observation of Legal Weapon. – Police officers who stopped a motorist for driving with an inoperable headlight were entitled to conduct a protective search of the car after an officer spotted, in plain view, a four-inch double-edge knife on the open glove box door, and a handgun found concealed in a trash bag was admissible in a subsequent prosecution of the motorist for being a felon in possession of a gun. The fact the knife was a legal weapon did not affect the validity of the search. Considering the nature of the knife and the position in which it was found, the officers reasonably suspected the motorist harbored additional weapons in the car.

[Validity, under federal Constitution, of warrantless search of motor vehicle – Supreme Court cases, note, 89 **L.Ed.2d** 939. See also **Cal.Jur.3d (Rev),** Criminal Law, § 2547; **Am.Jur.2d,** Searches and Seizures, § 16.]

(2a, 2b) Search and Seizures § 77 – Without Warrant – Vehicle – Weapons. – The search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences

from those facts, reasonably warrant the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons. There is no requirement officers adopt alternative means to insure their safety in order to avoid the intrusion involved; they must make a quick decision as to how to protect themselves and others from possible danger.

COUNSEL

Ronald Y. Butler, Public Defender, Carl C. Holmes, Thomas Havlena and Carol E. Lavacot, Deputy Public Defenders, for Defendant and Appellant.

John K. Van de Kamp, Attorney General, Steve White, Chief Assistant Attorney General, Rudolf Corona, Jr., and Maxine P. Cutler, Deputy Attorneys General, for Plaintiff and Respondent.

OPINION

SONENSHINE, J. – (1a) May Law enforcement officers justify a protective search of a traffic detainee's car when the sole basis for believing the suspect dangerous was the plain view observation of a legal weapon within that vehicle? Yes.

I

On March 14, 1988, at approximately 10:15 p.m., Orange County Sheriff's Deputies Kevin Bieker and David Koppin were on routine patrol in Anaheim when

they noticed Lafitte driving an older model Cadillac with an inoperable headlight. Lafitte complied with the officers' signal to stop by parking near a busy intersection.

Bieker asked Lafitte for his driver's license while Koppin stood outside the passenger door, illuminating the car with his flashlight. While Lafitte was explaining he did not have his license with him, Koppin interjected, "There's a knife in the car, get him out." Bieker escorted Lafitte to the curb, where he conducted a patdown search for weapons. Finding none, the deputy handcuffed Lafitte and ordered him to sit on the curb. Not surprisingly, Lafitte refused the officers' request to search the car.

Nevertheless, Bieker searched the vehicle "to obtain the knife and to search for possibly more weapons before allowing Mr. Lafitte back in the car to obtain the registration." Bieker found a four-inch double-edge knife in a sheath, resting on the open glove box door, with the handle extended over the edge toward the driver's seat. Bieker also found a gun clip containing six bullets under the driver's seat, and an unloaded handgun concealed in a trash bag hanging from the ashtray next to the steering wheel. After the weapon was found, two other police officers briefly stopped to observe the investigation.

Lafitte did not appear to be under the influence of alcohol or drugs, and cooperated fully during the investigation. The deputies observed no threatening gestures or movements. After the search, the deputies verified that Lafitte had a valid California driver's license. Lafitte's motion to suppress was denied and he pleaded guilty to being a felon in possession of a gun. This appeal followed.

II

In the seminal case of *Terry v. Ohio* (1968) 392 U.S. 1 [20 L.Ed.2d 889, 88 S.Ct. 1868], the United States Supreme Court held that police may conduct a patdown search of a suspect's outer clothing during a valid detention when the officer has reason to fear for his safety, that is, "the persons with whom he is dealing may be armed and presently dangerous." (*Id.*, at p. 30 [20 L.Ed.2d at p. 911].) Subsequent cases interpreted *Terry* as permitting an additional search for weapons in the area within a suspect's reach, but no further. (See, e.g., *United States v. Johnson* (8th Cir. 1980) 637 F.2d 532, 535.)

The scope of the *Terry* search was dramatically broadened, however, in *Michigan v. Long* (1983) 463 U.S. 1032 [77 L.Ed.2d 1201, 103 S.Ct. 3469]. There, two police officers, patrolling in a rural area after midnight, saw Long's speeding car travel erratically, eventually swerving off into a shallow ditch. Long met the officers at the rear of his car, but failed to respond when asked for his driver's license. A similar request for vehicle registration went unanswered; Long appeared to be under the influence. Eventually he turned and walked toward the open door of his vehicle. The officers followed and observed a large hunting knife on the floorboard next to the driver's seat. Although the weapon was legal, the officers immediately prevented Long from entering the car and conducted a patdown search, which revealed no weapons. One officer guarded Long while his partner looked in the car for more weapons. The search revealed an open pouch of marijuana on the front seat, and more contraband in the trunk.

(2a) In upholding the search, the Supreme Court held: "[T]he search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons." (*Id.*, at p. 1049 [77 L.Ed.2d at p. 1220].) In weighing the interest of the individual against the governmental intrusion, the court found a compelling need to protect police and others "from the possible presence of weapons in the area surrounding a suspect." (*Id.*, at pp. 1048-1049 [77 L.Ed.2d at p. 1220].)

(1b) Lafitte distinguishes *Long* by arguing that the officers based their suspicion of Long's dangerousness on factors not found in the present case: erratic driving, detention of a suspect late at night in a rural and presumably isolated setting, and unresponsive conduct by the detainee.[1] In contrast, Lafitte was stopped for a minor equipment violation in a populated area and was cooperative throughout the investigation. Because there were no other suspicious circumstances, Lafitte argues the police could not reasonably suspect he was dangerous solely for possession of a legal weapon – the knife.

Adopting Lafitte's argument would unduly constrict the applicability of *Long*, and we doubt the court

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[1] Lafitte also claims Long made an "unpredictable movement" towards the weapon. The facts of *Long* do not bear this out.

intended its holding to be narrowly confined to the specific facts before it.[2] For instance, the discovery of a hunting knife in rural Michigan could hardly be characterized as unusual. And the suspected criminal activity was drunk driving, in contrast to the suspicion of an impending armed robbery found in *Terry*.[3] Nevertheless, the court seemed willing to allow more leeway in the officer's decision that a suspect is "armed and presently dangerous,"[4] even for minor offenses.

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[2] Indeed, the court found its holding a natural outgrowth of past decisions, including the "workable rule" of *New York v. Belton* (1981) 453 U.S. 454, 460 [69 L.Ed.2d 768, 774-775, 101 S.Ct. 2860], which broadened car searches made incident to an arrest of the occupant. (*Michigan v. Long, supra*, 463 U.S. at pp. 1048-1049 [77 L.Ed.2d at 1219].) Moreover, Justice Brennan's dissenting opinion did not interpret the court's decision as a narrow holding based on unique facts, and noted "the implications of the court's decision are frightening." (*Id.*, at p. 1062 [77 L.Ed.2d at p. 1228].)

[3] As Justice Brennan noted: " A drunken driver is indeed dangerous while driving, but not while stopped on the roadside by the police. Even when an intoxicated person lawfully has in his car an object that could be used as a weapon, it requires imagination to conclude that he is presently dangerous." (*Id.*, at pp. 1061-1062 [77 L.Ed.2d at p. 1228.)

[4] Curiously, in several instances the court stated the *Terry* test required "an articulable and objectively reasonable belief that the suspect is *potentially* dangerous." (*Id.*, at p. 1051 [77 L.ed.2d at p. 1221], italics added.) This suggests a lesser standard, for almost everyone could be described as "potentially" dangerous. But we do not believe the court would alter such an important rule by implication; therefore, we will continue to adhere to *Terry's* requirement that the officer have a reasonable belief the suspect be armed and "presently" dangerous.

Lafitte's argument that the observation of a legal weapon is insufficient support for a *Terry* search raised by Long, but the court "expressly rejected the view that the validity of a *Terry* search depends on whether the weapon is possessed in accordance with state law." (*Id.*, at p. 1052, fn. 16 [77 L.Ed.2d at 1222].)[5] Lafitte emphasizes the search in *Long* occurred late at night in a rural area. These circumstances lend support to the reasonableness of the officers' protective search, but the absence of these factors here does not mean the deputies acted unreasonably. In *Long*, as here, the discovery of the weapon is the crucial fact which provides as reasonable basis for the officers' suspicion. Considering the nature of the weapon, a four-inch double-edged dagger, and the position in which it was found, we conclude the deputies reasonably suspected Lafitte harbored additional weapons in the car.

Finally, Lafitte contends the officers should have utilized other means to avoid any potential danger. He also argues the registration information could have been obtained through a quick radio call or a request for permission to retrieve if from the glove box.

(2b) The *Long* court rejected this very argument, stating there is no requirement "officers adopt alternative means to ensure their safety in order to avoid the intrusion involved in a *Terry* encounter [themselves]" because

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[5] Just how far this rule extends is unclear. As Justice Brennan pointed out, a baseball bat or hammer can be lethal weapon; does this mean a policeman could reasonably suspect a person is dangerous because these items are observed in his or her car?

they must make a " 'quick decision as to how to protect himself and others from possible danger. . . .' " (*Id.*, at p. 1052 [77 L.Ed.2d at p. 1222].)

Judgment affirmed.

Crosby, Acting P.J., and Wallin, J., concurred.

APPENDIX B

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

(Filed October 12, 1989)

Fourth Appellate District, Division Three,
NO. G007024 S011497

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

THE PEOPLE, Respondent

v.

CHARLES FRANCIS LAFITTE, Appellant

Appellant's petition for review DENIED.

Mosk, J. and Kaufman, J. are of the opinion the petition should be granted.

/s/ KAUFMAN J.
Acting Chief Justice

APPENDIX C

CONSTITUTIONAL PROVISIONS INCLUDED

1. The Fourth Amendment to the United States Constitution provides in relevant part:

> "The right of the People to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . "

2. The Fourteenth Amendment to the United States Constitution provides in relevant part:

> " . . . nor shall any State deprive any person of life, liberty, or p[roperty, without due process of law; not deny to any person within its jurisdiction the equal protection of the laws . . . "

3. Article I, section 13 of the California Constitution states in relevant part:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized."